

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 73.202(b),)
Table of Allotments)

FM Broadcast Stations)

(Denison-Sherman, Paris and Jacksboro,)
Texas and Madill, Oklahoma))
_____))

MM Docket No. 95-126

RM-8671

To: The Commission

OPPOSITION TO APPLICATION FOR REVIEW

Steve Landtroop, Inc. ("SLI"), licensee of KMAD-FM, Madill, Oklahoma, hereby opposes the Application for Review filed by Hunt Broadcasting, Inc. ("Hunt") on August 18, 1997 ("Application")¹ of the Policy and Rules Divisions' Memorandum Opinion and Order, DA 97-1491 (July 18, 1997) ("MO&O") in the above-captioned proceeding. In the Application, Hunt is trying to evade the consequences of the channel modifications that it successfully prosecuted before the Commission, including its

¹ The Application was not received by SLI until August 25, 1997 and due to other pressing matters requiring the attention of SLI's personnel, counsel for SLI did not obtain a copy until September 3, 1997, or only two days prior to the filing deadline for oppositions. Counsel for SLI contacted counsel for Hunt seeking consent to an extension of time, but counsel for Hunt was unable to grant that request. Accordingly, the instant opposition is being timely filed, and SLI respectfully requests permission to file a supplement in the near future to more fully develop its position.

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obligation to reimburse SLI for its expenses. The Commission should therefore deny the Application.

BACKGROUND

In its May 2, 1995 Petition for Rulemaking, Hunt requested the substitution of Channel 269C1 for Channel 269C3 at Denison-Sherman, Texas and modification of KDVE(FM)'s license to specify the higher power. To accommodate that change, Hunt also requested the substitution of (1) Channel 273A for Channel 272A at Madill, Oklahoma (affecting KMAD(FM), licensed to SLI); (2) Channel 282C2 for Channel 270C2 at Paris, Texas (affecting KBUS(FM), licensed to CarePhil Communications ("CarePhil")), and Channel 252A for Channel 269A, as a well as a change of site, for Station KAIH(FM) at Jacksboro, Texas.

SLI did not object to the channel change in Madill. It was SLI's expectation that, consistent with well-settled Commission policy, it would be reimbursed by Hunt for the expenses it incurred in changing channels. See Circleville and Columbus, Ohio, 8 FCC 2d 159 (1967).

In its Report and Order, 11 FCC Rcd 5316 (1996) ("R&O"), in this proceeding, the Commission granted Hunt's petition and ordered the requested channel changes and modified the affected licenses accordingly. The FM Table of Allotments was revised to show the changes, including the specification of channel 273A at Madill, Oklahoma. See 47 C.F.R. § 73.202(b).

In response to the R&O, CarePhil filed a petition for reconsideration stating that it had not received notice of Hunt's petition for rulemaking and that it had not consented to the channel change at Paris, Texas. CarePhil stated that it was nevertheless willing to make the change provided that the Commission clarify that Hunt was responsible for its expenses. In its opposition to CarePhil's petition, Hunt stated that the Paris channel change was mooted since the application that Hunt filed for Channel 269C1 meets the spacing requirements to KBUS(FM), on Channel 270C2. Hunt therefore requested that the Commission re-amend the Table of Allotments to return KBUS(FM) from Channel 282C2 to Channel 270C2.

In the MO&O, the Division ruled that the channel changes ordered by the Commission should take effect, and directed the parties to negotiate reimbursement terms. MO&O ¶ 8.

In its Application, Hunt states that it has now filed a proposal in MM Docket 97-104 that it contends will not require any of the channel changes it originally requested, including the Madill channel change. Hunt therefore requests that the Commission delay resolution of this proceeding until it has acted on Hunt's new proposal. Hunt further requests that the Commission "clarify" the status of the channel changes ordered in the R&O.

DISCUSSION

The Commission must reject Hunt's Application to the extent that it requests a reconsideration of the Madill channel change. SLI consented to, and the Commission

ordered, the change nearly a year and a half ago. That change is reflected in the current FM Table of Allotments. See 47 C.F.R. § 73.202(b). Hunt cannot now be heard to request that the change, along with the others that it requested, be undone because they no longer suit Hunt's purposes.

Based on the Commission's order in the R&O, SLI has incurred significant expenses in expectation of changing channels to 273A, including substantial engineering and legal fees. SLI has also changed its business plans to reflect its changed channel status and has been operating on the assumption that the channel change will be effectuated. Among other things, based on its engineering review, SLI has determined that the channel change to Channel 273A will allow KMAD(FM) to upgrade its facilities to a C2 and thus be able to improve considerably its service to the public.

Hunt now argues that the Madill change, and the other changes requested by Hunt, should be deferred pending the outcome of MM Docket 97-104. That course, however, would leave SLI and the other affected licensees in regulatory limbo and would jeopardize the public interest benefits of the changes ordered in the R&O. Having ordered the changes to benefit Hunt in the first place, the Commission must hold Hunt to its original rulemaking proposal.

It is in this instant proceeding that the Commission ordered the Madill channel change and the outcome of this proceeding should not be conditioned on the resolution of Hunt's new proposal. If the Commission were to grant Hunt's eleventh hour request, it would be setting a precedent that would greatly disserve the public interest. No licensee

would be able to rely on the Commission's orders or the Table of Allotments, and no proceeding would ever be final. Indeed, there would be nothing to prevent Hunt from changing its mind a second time and filing yet another proposal in yet another proceeding.

CONCLUSION

For the reasons shown above, the Commission should deny Hunt's Application.

Dated: September 5, 1997

Respectfully submitted,

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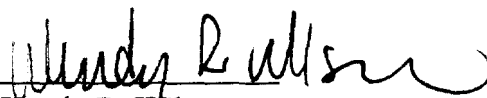
I hereby certify that on September 5, 1997, a copy of the foregoing Opposition to Application for Review was sent by first class United States mail to the following:

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